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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

Johnathan B. Woods,

Debtor.

Case No. 2:12-bk-13564-PS
Chapter 13

**RESPONSE TO DEBTOR'S REQUEST
TO ENLARGE TIME FOR WRITTEN
OBJECTIONS**

Bank of America, N.A., as successor by
merger to BAC Home Loans Servicing, LP
FKA Countrywide Home Loans Servicing LP,
by its attorney-in-fact Carrington Mortgage
Services, LLC,

Re: Real Property Located at
3930 East Cody Avenue
Gilbert, AZ 85234

Movant,

v.

Johnathan B. Woods, Debtor; and Russell
Brown, Trustee,

Respondents.

Bank of America, N.A ("Movant") is the Owner of this property as the result of a trustee's sale over five years ago. Through Debtor filing his third meritless request to extend the time to object to the Motion for Relief, Debtor is continuing to use the courts to stall an eviction proceeding. Two previous Motions for Relief from Stay were filed, in which Debtor

1 filed a similar request to extend the response deadline (2nd request was denied by the Court) and
2 he also filed Objections to both the prior MFRs. Debtor is required to follow the procedural
3 rules and he failed to timely file an Objection by the deadline of October 19, 2015. Debtor
4 failed to do so and Movant requests that the Court find there is no cause to extend the deadline,
5 deny the request and grant Movant's Motion for Relief.
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8 **I. Statement of Facts**

9 1. On February 16, 2010, prior to Jonathan B. Woods ("Debtor") filing for
10 bankruptcy protection, the Property proceeded to non-judicial foreclosure and was placed for
11 trustee's sale by auction ("trustee's sale"). At that time, BAC Home Loans Servicing, LP FKA
12 Countrywide Home Loans Servicing LP bid the loan amount and received title to the property
13 by a Trustee's Deed Upon Sale ("Trustee's Deed"), which was signed on February 17, 2010,
14 and recorded in the Maricopa County Recorder's Office on February 22, 2010, as Document
15 No. 20100142541.
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18 2. On July 17, 2012, a Motion for Relief from Stay ("MFR 1") was filed by Movant
19 in which Movant sought relief from the automatic bankruptcy stay to proceed with a forcible
20 entry and detainer action in state court. See Docket Entry #21.
21

22 3. On July 31, 2014, Debtor filed Debtor's Request to Enlarge Time for Written
23 Objections ("Request 1"). See Docket Entry #29.
24

25 4. On August 13, 2012, Debtor filed a Complaint in Adversary Case 2:12-ap-01463
26 against Movant claiming it was not the owner of the Property. The Court granted Movant's
27 Motion to Dismiss and the Adversary Case was dismissed with prejudice.
28

1 5. On May 7, 2014, a Motion for Relief from Stay (“MFR 2”) was filed by Movant
2 in which Movant sought relief from the automatic bankruptcy stay to proceed with a forcible
3 entry and detainer action in state court. See Docket Entry #44. This was supported by a
4 Declaration by Movant that it is the Owner of the Property. See Docket Entry #45.

6 6. On May 21, 2014, Debtor filed Debtor’s Request to Enlarge Time for Written
7 Objections pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1) (“Request 2”), in
8 which Debtor states “Since Movant did not seek emergency relief and this property is my
9 family residence, this court’s “LOCAL RULES OF BANKRUPTCY PROCEDURE” 4001-
10 1(b) mandates with its motion Movant was required to file a “Residential Property Pre-Filing
11 Certification.” See Docket Entry #47.

14 7. On May 23, 2014, this Court, by the Honorable Sarah S. Curley, issued an Order
15 Denying Debtor’s Request to Enlarge Time for Written Objections. The Order denies Debtor’s
16 First Request and states Local Rule 4001-1(b) “provides that the failure to include this
17 certification may affect the inclusion of attorney’s fees as part of the secured debt or as part of
18 the allowed claim. Therefore, while the failure to include the certification may affect the
19 Movant’s attorney fees, it does not warrant delay in resolution of this matter.” See Docket
20 Entry #48.

23 8. On July 25, 2014, Debtor filed an Objection to MFR 2. See Docket Entry #54.

25 9. On November 12, 2014, Movant withdrew MFR 2. See Docket Entry #71.

26 10. On September 29, 2015, Movant filed a Motion for Relief from the Automatic
27 Stay (“MFR 3”) in which Movant sought relief from the automatic bankruptcy stay to proceed
28 with a forcible entry and detainer action in state court. See Docket Entry #79.

1 11. On October 13, 2015, Debtor filed Debtor's Request to Enlarge Time for Written
2 Objections pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1) ("Request 3"). This
3 is pleading is essentially the same as Debtor's First Request. See Docket Entry #81.
4

5 **II. Argument**

6 **A. No Cause Shown To Enlarge Response Time.**

7 Debtor requests an additional 30 days from some future date of Movant sending the
8 4001-1(b) notice to object to Movant's MFR 3. Federal Rule of Bankruptcy Procedure
9 9006(b)(1) states,
10

11 ...when an act is required or allowed to be done at or within a specified period by
12 these rules or by a notice given thereunder or by order of court, the court for
13 cause shown may at any time in its discretion (1) with or without motion or notice
14 order the period enlarged if the request therefor is made before the expiration of
the period originally prescribed...

15 Debtor's Request 2, which was denied by this Court, is substantially similar to Debtor's
16 Request 3. Debtor's only additional argument in the Request 3 is that Movant failed to inform
17 the Court that Debtor filed an appeal with the Ninth Circuit Court of Appeals. This, however,
18 is not cause to enlarge the period of time to file an objection in this case as the two cases are
19 independent of each other. The appeal relates to pre-trustee's sale issues and here Movant is
20 seeking stay relief to proceed with an eviction. There is no evidence that there is a stay pending
21 the appeal. Additionally, co-Defendant and loan originator Taylor Bean & Whitaker ("TBW")
22 filed a Chapter 11 bankruptcy case currently pending in the Middle District of Florida as Case
23 No. 3:09-bk-07047-JAF. On July 21, 2011, the Bankruptcy Court entered its Order Confirming
24 Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official
25 Committee of Unsecured Creditors (the "Confirmation Order"). The Confirmation Order
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1 permanently enjoins all Persons from “. . . (i) commencing or continuing in any manner any
2 action or other proceeding of any kind. . .” Any attempt to proceed with the appeal maybe a
3 violation of the automatic stay.
4

5 Also, Debtor’s opportunity to assert any defense or argument that the trustee’s sale was
6 invalid was no later than 5:00 p.m. mountain standard time of the last business day before the
7 scheduled date of the sale. A.R.S. § 33-808(8). This was not done and this Court has already
8 dismissed with prejudice Debtor’s challenge to ownership in the Adversary Proceeding.
9

10 Debtor’s request for an additional 30 days to object to Movant’s MFR 3 should be
11 denied as no cause was shown.
12

13 **B. Local Rule 4001-1(b) Does Not Apply To Occupants.**

14 Debtor argues that Movant failed to send a letter notifying him of Movant’s intent to file
15 a Motion for Relief as required by U.S. Bankruptcy Court, District of Arizona, Local Rule
16 4001-1(b). This rule only applies if a Movant intends to file a motion seeking relief as to the
17 debtor’s residence. The subject collateral property is not, nor cannot be Debtor’s residence as
18 the titled owner of the property is Movant, and Movant has not leased the property to Debtor.
19 Debtor has been living in the property for over 5 years without submitting any form of payment
20 to Movant. Debtor is simply using stall tactics with Movant and this Court to delay a forcible
21 entry and detainer action.
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24 Further, as this Court stated earlier in this case, failure to include the 4001-1(b)
25 certification may affect the Movant’s attorney’s fees, but it does not warrant delay in resolution
26 of the present matter.
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III. Conclusion

WHEREFORE, Movant prays as follows:

1. This Court deny Debtor's request for an extension to file an objection to Movant's pending Motion for Relief;
2. For an Order granting Movant's Motion for Relief;
3. For an Order waiving the 14-day stay provided by Bankruptcy Rule 4001(a)(3);
4. For an Order binding and effective despite any conversion of this Bankruptcy proceeding; and,
5. For such other relief as this Court deems appropriate.

DATED this 21st day of October, 2015.

/s/ Alex Schulz
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ORIGINAL filed by ECF and
COPIES of the foregoing were mailed
this 21st day of October, 2015, to:

Jonathan B. Woods
3930 E. Cody Ave
Gilbert, AZ 85234
Debtor

1 Russell Brown
2 Chapter 13 Trustee
3 3838 N. Central Ave Ste. 800
4 Phoenix, AZ 85012

5 U.S. Trustee
6 Office of the U.S. Trustee
7 230 N. First Avenue, Suite 204
8 Phoenix, AZ 85003-1706

9 /s/ Janette Belmontes
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